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NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON
U.S. COURT OF APPEALS**

MOONPATH ENTERPRISES LIMITED;
LAVINIA CORPORATION,

Plaintiffs - Appellees,

and,

MITSUI & COMPANY LTD.,

Intervenor,

v.

JOINT STOCK HOLDING COMPANY
DALMOREPRODUCT,

Defendant - Appellant.

No. 02-35740

D.C. No. CV-01-00274-JCC

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
John C. Coughenour, Chief Judge, Presiding

Argued and Submitted September 11, 2003
Seattle, Washington

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Before: HAWKINS and BERZON, Circuit Judges, and QUACKENBUSH,**
District Judge.

The claim of appellant Joint Stock Holding Co. Dalmoreproduct (“DMP”) for wrongful attachment is not precluded by the subsequent assignment of the subject of that attachment. Because the attachment had already taken place at the time that DMP assigned the cause of action to Mitsui, Inc. (“Mitsui”), the onus was on the parties to the assignment to explicitly include the right to challenge the attachment in their agreement. The language of the assignment clause is insufficient to absorb rights with regard to the preceding attachments, including any action for wrongful attachments. While DMP’s claim for wrongful attachment was viable, the district court correctly granted the motion to compel arbitration submitted by Appellees Moonpath Enterprises Ltd. and Lavinia Corp. (collectively “Lavinia”). Under the Contract of Affreightment and companion Master Agreement (collectively “Agreement”) between Lavinia and DMP, the parties were bound to arbitrate “any matters, disputes or issues arising hereunder or in connection herewith.” Recognizing the strong federal policy favoring arbitration, we have interpreted arbitration clauses in accordance with the breadth of the language used. See, e.g., Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24-25 (1983); Simula, Inc. v.

** Honorable Justin L. Quackenbush, Senior District Judge for the Eastern District of Washington, sitting by designation.

Autoliv, Inc., 175 F.3d 716, 719 (9th Cir. 1999). When inclusive phrasing such as “issues arising hereunder” or “in connection herewith” is used, “every dispute between the parties having a significant relationship to the contract regardless of the label attached to the dispute” should be sent to arbitration. Simula, 175 F.3d at 720 (quoting J.J. Ryan & Sons, Inc. v. Rhone Poulenc Textile, S.A., 863 F.2d 315, 321 (4th Cir. 1988)).

Although the wrongful attachment claim had to be litigated before the arbitration board if at all, DMP failed to raise it and the final arbitration award provides no relief on that claim. DMP also failed to contest the resulting arbitration award and the motion to confirm that award presented to the district court.¹ Whether this failure constitutes waiver or a failure to raise grounds for review under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 9 U.S.C. § 207, we decline to consider the claim for wrongful attachment here. As a final matter, DMP also waived any right to contest the disbursement of the funds that were the subject of the attachment when it entered into a stipulated settlement agreement with Lavinia and Mitsui prior to the announcement of the arbitration award.

AFFIRMED.

¹ DMP’s response to the motion to confirm was to contest the validity of the writ of attachment, not the substance of the award itself.